IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Original Jurisdiction

Dated: Nainital: the 24th day of June 2002

Criminal Misc. Application no.182 of 2002

(Under Section 482 of Criminal Procedure Code)

District Dehradun.

Ramnath Tewari- S/o Sri Murlidhar Tewari, r/o house no.132, Ashok Vihar, Ajabpur Kalan, Police station Dalanwala ---------- Applicant

Versus

1. State of Uttaranchasl
2. Smt.Madhu Kala W/o Sri Lalit Mohan Kala, r/o Hussainganj, Police Station Mussoorie, district Dehradun.

Opposite Parties.

By the Court

Hon'ble Irshad Hussain, J.

Heard the learned counsel for the petitioner and the learned A.G.A

The grievance of the petitioner is that the complaint was not filed within 15 days of the alleged service of the notice as contemplated under clause © of the proviso to section 138 of the Negotiable Instrument Act, 1881 inasmuch as no date of the service or the refusal of the notice has been given in the complaint. The petitioner has agitated this matter before the learned Magistrate and subsequently in the revision before the learned Sessions Judge. The learned Sessions Judge has opined that the matter of service of the notice and the duration could only be ascertained on the basis of the evidence to be led by the parties and on its appreciation. The learned counsel for the petitioner has cited the decision of Hon'ble Supreme Court in Skidhar M.A. Versus Metalloy N. Steel Corporation,(2000)1 Supreme Court Cases 397.In the said case reference has also been made to an earlier case of State of M.P. Vs. Hiralal,1 (1996) 7 SCC 523 and the principle laid down in both the cases in that the deemed service of the notice is to be accepted on the facts of each case which indicates that the matter about the service is to be decided on the basis of the evidence to be led in the case by the parties and its appreciation. Consequently the above decision does not help the petitioner's cause. It is of significance that the cheque given by the petitioner was dishonoured thereafter, the notice of demand was also sent within the time to call upon the petitioner to pay the amount due under the said cheque.

Considering these aspects of the matter the question of service of notice has to be determined on the basis of evidence as also opined by the learned Sessions Judge.

In view of the above discussion the petition has no force and is dismissed in limine.

(Irshad Hussain, J.)

24.6.2002